

This letter discusses Service Occupation Tax, see 86 Ill. Adm. Code 140.101 and Telecommunications Excise Tax, see 86 Ill. Adm. Code 495. (This is a GIL).

October 26, 2001

Dear Xxxxx:

This letter is in response to your letter dated August 16, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We have a client who is starting a business in Illinois. The company provides consulting services which potentially include some telecommunication services.

The question then is whether or not this company will be required to collect and/or remit and sales, excise or other tax to the Illinois Department of Revenue on the services it provides. A description of the services to be provided follows:

The company provides marketing strategies, marketing materials and consulting services along with recorded information service to real estate agents and lenders. The service includes a marketing package, start up materials, consultation as needed by customers, fax-on-demand, and ability to get information via the internet. These services are provided in connection with the customer's private 800 line which rings into the company's system.

The company integrates the customer's 800 line with the marketing services provided to customers. The 800 number is included with various advertising and promotional campaigns which are intended to result in telephone calls dialed directly into the company on the 800 line by perspective clients for the company's customers.

Upon receipt of an 800 call the company obtains certain information from the prospective clients and prepares a specific marketing package for its customers to use on a follow-up basis. This package includes scripts and examples for initiating dialogue with a prospective client. The package is provided over fax lines or via other delivery services.

Approximately 5% of the incoming calls on the 800 line utilize a 'call forward' feature where calls are actually switched to an agent's line to enable a prospective client to have immediate contact with an agent.

All of these services are handled together for billing purposes. Billings are rendered at \$29.95 per month plus 18.9 cents per minute. Time billed is based upon the amount of time recorded as used by the 800 number.

Federal excise taxes and state taxes and surcharges are paid by each customer as a part of their billing for their 800 line. Additionally, the company pays federal excise taxes and state taxes and surcharges on its own telephone lines upon receipt of its monthly bills

We assume that the company cannot be described as a telecommunications company; however, they desire to comply fully with all laws and regulations. As a result, they would like to clarify the tax status now rather than incur a potential liability at some future date for any unpaid taxes.

Is the company subject to any sales, excise or other taxes or surcharges payable to the State of Illinois?

In general, the sale of tangible personal property at retail in Illinois subjects the retailer to Retailers' Occupation Tax liability based upon the gross receipts received by the retailer. However, the provision of services in Illinois that is not accompanied by the transfer of tangible personal property is not subject to Retailers' Occupation Tax.

The sale of planning or consulting services that is accompanied by the transfer of tangible personal property such as reports is subject to liability under the Service Occupation Tax Act. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service. Servicemen incur either Service Occupation Tax (SOT) liability or Use Tax liability in these transactions. The tax consequences depend upon the method used to calculate the liability. Servicemen may calculate their tax base in one of four ways: 1) separately state the selling price of the tangible personal property being transferred; 2) calculate 50% of the entire bill; 3) Service Occupation Tax on the cost price of the tangible personal property being transferred if they are registered de minimis servicemen; or, 4) Use Tax on the cost price of the tangible personal property being transferred if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

Under the second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their customers as a tax base. Both of the above method provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.105. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. They do not provide suppliers with Certificates of Resale. These servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

Persons who provide customers with the use of 1-800 service or dedicated line service and assess customers charges for the use of such 1-800 numbers and dedicated line charges, are considered to be telecommunications retailers and will generally incur Telecommunications Excise Tax on the total charges made for such services.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.